



DEPARTMENT OF JUSTICE

[CPCLO Order No. 004-2020]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Legal Policy, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Office of Legal Policy (OLP), a component within the United States Department of Justice (DOJ or Department), proposes to modify its System of Records Notice currently titled “United States Judges Records System,” JUSTICE/OLP-002. OLP proposes to modify this system of records notice as part of the Department’s overall effort to update DOJ leadership system of records notices in light of organizational, procedural, and technological changes at the Department.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the modifications to this system of records will be effective upon publication, subject to a 30-day period in which to comment on the modified routine uses, described below. Please submit any comments by [INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square (2Con), 145 N Street, NE, Suite 8W.300, Washington, DC 20530; by facsimile at 202-307-0693; or by email at privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Matrina Matthews, Executive Officer, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 4234, Washington, DC 20530-0001; telephone: (202) 616-0040.

SUPPLEMENTARY INFORMATION:

The Assistant Attorney General, OLP, is responsible for assisting the Attorney General in, *inter alia*, advising and assisting in the selection and appointment of Federal judges. OLP is comprised of attorneys and other DOJ personnel responsible for assisting the Assistant Attorney General, OLP, in executing the responsibilities of the office. The Department established the system of records, "United States Judges Records System," JUSTICE/OLP-002, to maintain records needed to assist the Assistant Attorney General, OLP, and the personnel within OLP, in assessing candidates for potential nomination to be a Federal judge and securing a judicial nominee's confirmation and appointment. Since JUSTICE/OLP-002 was last published in full, 50 FR 30309 (July 25, 1985), OLP, and the Department as a whole, have undertaken a number of organizational, procedural, and technological changes that have modernized the information and information system that are used to collect, use, maintain, and disseminate these records. The Department has determined that updates to this system of records notice are necessary to describe the Department's organizational, procedural, and technological changes.

Specifically, JUSTICE/OLP-002 is being updated as follows: the system of records is being renamed the "Judicial Nominations Files"; the system location paragraph has been updated to account for the location of both hard copies and the Department's data centers; the authorities paragraph has been clarified to include statutes outlining the role and responsibilities of the Attorney General, as delegated to the Assistant Attorney General and OLP; the categories-of-individuals paragraph has been updated to include individuals who were candidates for, nominated for, or nominated and confirmed for, Federal judgeships, excluding those appointed to the United States Court of Appeals for

the Armed Forces, the United States Court of Appeals for Veterans Claims, the United States Tax Court, and the United States Court of Military Commission Review; the categories-of-individuals paragraph has also been updated to include individuals who were candidates for, nominated for, and/or confirmed to a position on the U.S.

Sentencing Commission or related Executive Branch positions; the categories-of-records paragraph has been clarified to better articulate information that could be maintained in an individual's file; the routine uses have been updated: (1) to add or update routine uses that appear in almost every DOJ system of records notice that allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, and disclosures to identify and mitigate actual or suspected breaches); and (2) to revise the White House disclosure routine use to clearly indicate the purposes for which records would be disclosed to the White House and its staff; the records-storage paragraph has been updated to include the electronic storage of records; the paragraph on policies and practices for the retrieval of records in the system has been updated to account for the electronic storage of records; the records-retention paragraph has been updated to include the appropriate records control schedules; the access, amendment, and notification procedures have been clarified to detail the process for requesting access to, amendment of, or notification of, records within this system of records not otherwise exempt from such requests; the exemptions paragraph has been modified to claim certain Privacy Act exemptions for this system, consistent with the Notice of Proposed Rulemaking published elsewhere in the Federal Register, that will modify the exemptions claimed for this system of records; and a history paragraph has been added. The Department has republished the system of records notice in its entirety for the convenience of the public.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: July 1, 2021.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer,

United States Department of Justice.

JUSTICE/OLP-002**SYSTEM NAME AND NUMBER:**

Judicial Nominations Files, JUSTICE/OLP-002.

SECURITY CLASSIFICATION:

Classified and Controlled Unclassified Information.

SYSTEM LOCATION:

Hard-copy records will be maintained at OLP, Robert F. Kennedy Department of Justice Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Electronic records will be maintained at one or more of the Department's data centers, including, but not limited to, the Justice Data Center, Rockville, MD 20854, and/or at one or more of the Department's Core Enterprise Facilities (CEF), including, but not limited to, the Department's CEF East, Clarksburg, WV 26306, or CEF West, Pocatello, ID 83201. Records within this system of records may be transferred to a Department-authorized cloud service provider, in which records would be limited to locations within the continental United States. Access to these electronic records includes all locations at which OLP operates or at which OLP operations are supported, including the Robert F. Kennedy Department of Justice Building. Some or all system information may also be duplicated at other locations where the Department has granted direct access to support OLP operations, system backup, emergency preparedness, and/or continuity of operations.

To determine the location of particular OLP records, contact the system manager, whose contact information is listed in the "SYSTEM MANAGER(S)" paragraph, below.

SYSTEM MANAGER(S):

Assistant Attorney General, Office of Legal Policy, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; phone: 202-514-4601; general inquiries to the Department can be submitted online at: <https://www.justice.gov/contact-us>.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to the United States Constitution, Art. II, Sec. 2, Clause 2; 28 U.S.C. ch. 31; 28 U.S.C. 44; 5 U.S.C. 301; and 28 CFR Part 0, Subpart D-2.

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of assisting the Assistant Attorney General, OLP, in carrying out OLP's responsibilities including, but not limited to: advising and assisting the Attorney General in the selection and appointment of Federal judges; assessing candidates for potential nomination to a Federal judgeship; securing a judicial nominee's confirmation and appointment to a Federal judgeship; and providing advice and assistance in the selection and appointment of candidates to positions on the U.S. Sentencing Commission or an Executive Branch position.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system may encompass records on: individuals who were candidates for Federal judgeships but who were never nominated; individuals who were nominated for Federal judgeships but who were never confirmed; individuals who were nominated and confirmed for Federal judgeships, excluding those appointed to the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, and the United States Court of Military Commission Review; and individuals who were considered for, nominated for, and/or confirmed to a position on the U.S. Sentencing Commission or an Executive Branch position.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of records pertaining to: (1) files of individuals who were candidates for Federal judgeships but who were never nominated, which may include: scheduling documents, Congressional actions and requests (for example, Senate Questionnaires), FBI background files and related paperwork, Financial Disclosure

Reports, nomination forms and the Attorney General cover letters that accompany them, resumes, documents reflecting notes or assessments of candidates, and any other related documents necessary and relevant to assessing the potential nomination of a candidate for a Federal judgeship; (2) files of individuals who were nominated for Federal judgeships but who were never confirmed, which may include: those documents mentioned in (1), above, as well as American Bar Association (ABA) rating letters; (3) files of individuals who were nominated and confirmed for Federal judgeships, which may include: those documents mentioned in (1) and (2), above, as well as appointment records, oaths of office, Senate confirmation documentation, commission documentation, tax checks and credit reports waivers, medical reports, and nomination files of confirmed individuals that are maintained by employees working on the judicial nominations and confirmations; and (4) files on individuals who were candidates for, nominated for, or confirmed to the United States Sentencing Commission or an Executive Branch position, which may include those documents mentioned in (1) and (3), above, and any other related documents necessary and relevant to assessing the potential nomination and/or confirmation of a nominee for the United States Sentencing Commission or an Executive Branch position.

RECORD SOURCE CATEGORIES:

Non-exempt sources of information contained in this system include the general public, organizations, associations, the subjects of the records themselves, government agencies, as appropriate, and other relevant parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for

the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(A) To officials and employees of the White House concerning the selection, vetting, appointment, confirmation, or other activities related to a judicial candidate, judicial nominee, a confirmed Federal judge, or a candidate for or nominee to the United States Sentencing Commission or an Executive Branch position.

(B) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law – criminal, civil, or regulatory in nature – the relevant records may be referred to the appropriate Federal, State, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(C) To any person or entity that OLP has reason to believe possesses information regarding a matter within the jurisdiction of OLP, to the extent deemed to be necessary by OLP in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(D) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(E) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

(F) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, interagency agreement,

or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(G) To a former employee of the Department for the purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(H) To a Member of Congress, or staff acting on the Member's behalf, when the Member or staff requests the information for investigative or confirmation-related purposes.

(I) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(J) To appropriate agencies, entities, and persons when: (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(K) To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing,

minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(L) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

(M) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, tribal, foreign, or international) where the information is relevant to the recipient entity's law enforcement responsibilities.

(N) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information, for such purposes.

(O) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such threat.

(P) To any person or entity if deemed by OLP to be necessary in order to elicit information or cooperation from the recipient for use by OLP in the performance of an authorized law enforcement activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system may be stored in electronic form, stored in paper folders, and/or stored on magnetic disks, hard disks, removable storage devices, or other electronic media. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

For individuals who were candidates for Federal judgeships but who were never nominated, information is retrieved by use of the name of the nominee and by the year in which a decision was made not to nominate the candidate. For individuals who were

nominated for Federal judgeships but who were never confirmed, information is retrieved by use of the name of the nominee and by the year in which a decision was made not to re-nominate the candidate. For individuals who were nominated and confirmed for Federal judgeships, information is retrieved by use of the name of the nominee and by the year in which they were confirmed. For individuals who were candidates for, nominated for, or confirmed to the United States Sentencing Commission or an Executive Branch position, information is retrieved by use of the name of the individual and by the year in which a decision was made on the individual's candidacy, nomination, or confirmation. Records for each of these categories are filed alphabetically by year.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with guidelines approved by the National Archives and Records Administration (DAA-0060-2012-0009). Records are destroyed for candidates who are not nominated three years after the decision is made not to nominate the candidate. Records are destroyed for candidates who are nominated but not confirmed five years after the decision is made by the President not to re-nominate the candidate. Records for files of candidates who are nominated and confirmed are transferred to the National Archives sixty years after the date of confirmation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved

software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data with a valid user identification and password.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Chief, Initial Request Staff, Office of Information Policy, 1425 New York Avenue, NW, Suite 11050, Washington, DC 20530-0001. Requests may also be made online at <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. The envelope, letter, and/or subject line should be clearly marked “Privacy Act Access Request.” The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort in accordance with 28 CFR § 16.41(d). The request must include a general description of the records sought and must include the requester’s full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from the access provisions as described in the “EXEMPTIONS PROMULGATED FOR THE SYSTEM” paragraph, below. An individual who is the subject of a record in this system of records may request access to those records that are not exempt from access. A determination of whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice Web site at <https://www.justice.gov/oip/make-foia-request-doj>.

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR Part 16 Subpart D, "Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974."

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the "RECORD ACCESS PROCEDURES" paragraph, above. All requests to contest or amend records must be in writing, and the envelope, letter, and/or subject line should be clearly marked "Privacy Act Amendment Request." All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR §16.46, "Requests for Amendment or Correction of Records."

NOTIFICATION PROCEDURES:

Individuals may request to be notified if a record in this system of records pertains to them by utilizing the same procedures identified in the "RECORD ACCESS PROCEDURES" paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6). Rules have been promulgated in accordance with the

requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

HISTORY:

50 FR 30309 (Sept. 12, 1985): Last published in full;

66 FR 8425 (Jan. 31, 2001); Added one routine use;

72 FR 3410 (Jan. 25, 2007): Added one routine use; and

82 FR 24147 (May 25, 2017): Rescinded 72 FR 3410, and added two routine uses.

[FR Doc. 2021-14988 Filed: 7/13/2021 8:45 am; Publication Date: 7/14/2021]